

REMARKS

The election/restriction requirement dated March 25, 2004 holds that this application contains claims directed to two patentably distinct species. More specifically, Applicant is required to elect one of the following patentably distinct species for prosecution on the merits under 35 U.S.C. §121:

Species I – Claims 2-12;

Species II – Claims 13-18;

Additionally, the Office Action indicates that at least claims 1, 19 and 20 are generic.

In response, Applicant hereby elects Species I (claims 1-12, 19 and 20) *with traverse*. Applicant believes that the restriction requirement between the above Species I and Species II is *improper* in that the classification of these species is based solely on claims. The restriction requirement was apparently made because claims 2 and 13 are directed to two different braking modes utilized in the present invention, i.e., an electric power maintenance priority mode and a braking response priority mode. However, as clearly set forth in MPEP 806.04(e), claims are definitions of inventions and *claims are never species*. Species are always the specifically *different embodiments*. Moreover, the claims to be restricted to different species must recite the *mutually exclusive* characteristics of such species. In order for the claims to be mutually exclusive, one claim should recite limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first (see MPEP 806.04(f)). Thus, in the present case, the restriction requirement to the patentably distinct species should be made based on the *different embodiments* of the present invention, but not claims. Moreover, claims 2-12 (Species I) and claims 13-18 (Species II) must be mutually exclusive under the disclosure of the present invention. However, the present application contains only

one preferred embodiment which discloses both the electric power maintenance priority mode and the braking response priority mode as the braking modes. In fact, paragraph [0028] beginning at line 5 in page 6 of the specification states:

The braking mode selection switch 15 has two operating positions related to the electric power maintenance priority mode and the braking response priority mode. For example, when the driver desires to reduce the power consumed and increase the power generated by regenerative braking to maintain the electric power of the battery 12, the braking mode switch 15 is set to the electric power maintenance priority mode position. Alternatively, when the driver desires a high generated response of the braking force during braking operation, the braking mode switch 15 is set to the braking response priority mode position.

Clearly, claims 2-12 and claims 13-18 are not directed to separate embodiments of the present invention, but rather claiming different aspects of the preferred embodiment of the present invention. Moreover, the limitations of the electric power maintenance priority mode recited in claim 12 and the braking response priority mode recited in claim 13 are *not* mutually exclusive. Rather, the vehicle braking control system of the present invention preferably switches between these two modes based on the driver's preference or the driving condition. Accordingly, Applicant believes the restriction requirement requiring Applicant to elect one of Species I and Species II is improper.

In any event, Applicant has added new dependent claims 21-26 that correspond to claims 13-18. Applicant has also added a new dependent claim 27 which clearly recites the braking mode selecting section is configured to selectively set one of an electric power maintenance priority mode and a braking response priority mode as the selected braking mode. Also, a new claim 28 recites the selection of the braking modes are operated either manually or automatically.

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Accordingly, Applicant respectfully requests reconsideration and withdrawal of the restriction requirement and examination of all claims.

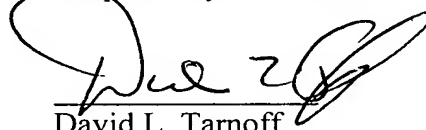
Information Disclosure Statement

Applicant submits herewith an Information Disclosure Statement and a completed PTO-1449 form to bring the attached reference to the Examiner's attention. Applicant respectfully requests that the attached reference be considered and made of record in this application.

* * *

Prompt examination on the merits is respectfully requested.

Respectfully submitted,



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